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RUSSIAN PERSPECTIVES ON INTERNATIONAL LAW SYMPOSIUM

A Nationalized Approach to International Law: the Case of Russia

MARIA ISSAEVA — 5 January, 2018

When a new edition of one of the most authoritative Soviet international law textbooks co-authored by professor Tunkin was published in 1999, most of its chapters repeated the previous 1981 version of the same textbook word-for-word, with references to "bourgeois" science of international law in the 1981 edition simply replaced by global change to "Western" science of international law in the 1999 edition. This is probably the best illustration of the continued – despite the end of the Cold War – ideological split between the "communist" and the "capitalist" systems in the Russian international law mentality. Building upon a legacy of strong Soviet rhetoric, guardians of the closed system of 'Russian international law' continue, domestically, to view and present it as the leading 'science' of international law in the world – a world that unfairly fails to likewise accord it such status. Yet the 'outer world' of international legal profession barely knows of the 'Russian international law'.

The annexation of Crimea in 2014 has revealed the depth of the abyss that splits apart the 'old school' Russian legal commentators and other international lawyers. To an outside observer, justifications offered by Russian doctrine in response to the annexation of Crimea looked like a bizarre, or preconceived, mix of arguments involving the domestic affairs of Ukraine (disguised as issues of its alleged failed statehood), use of force by the 'West', and Russia's self-proclaimed lawful intervention on the basis of the above. Although discussions on Crimea involved matters of general international law and seemingly interpreted the same applicable treaties and rules, structures of argumentation derived from Russian doctrine appeared to be based on entirely different premises when compared to those of all other international legal commentators.

The case of Crimea has conclusively revealed that Russia's doctrinal community of international lawyers is incapable of resisting the mainstream political will of the day. Indeed, it does not even see such critical engagement as among its principal tasks. Focusing exclusively on reflecting the official Russian line expressed by the Russian President and Ministry of Foreign Affairs, including at the UN Security Council, the Russian academia ignored or denounced, often with extreme hostility, not only interpretations of international law by other States, but also interpretations offered by foreign academics, international organizations and even its own prior interpretations, including own positions earlier developed by the same doctrinal authors.

Importantly, this striking unity of perspective among Russian academic international lawyers is not due to the increasing pressure exerted by the Russian government on NGOs and civil society in the recent years. The proximity of these scholars to government has, since the 1990s, been mostly voluntary – such scholars have willingly sought to act as advocates of the government position in the two and a half decades since the end of the USSR, without any pressure from the government itself. Furthermore, it was in fact the Russian international law scholars themselves and the academic system they inherited from the USSR that were responsible for most of the restrictions, self-limitations, and dehumanization in post-Soviet academia well before the current conflict of Russia with Ukraine.

Eastern European mythology speaks of a very dark figure named Koschei the Deathless. Koschei was unable to die because he took his soul out of his body and hid it 'inside a needle, in an egg, in a duck, in a hare, in an iron chest, buried under an oak tree, on a hidden island'. Metaphorically speaking, Russian international law doctrine may be regarded as one such 'horcrux' wherein the soul of Russia's totalitarian past has been in hiding for the past quarter of a century.

A word, however, should be spoken of the new generation of international lawyers in Russia. In a heated debate on the pages of the Russian newspapers in the course of 2015, Elena Lukyanova, a professor of constitutional law at the Higher School of Economics, clashed with one of the most active proponents of the legality of Crimean annexation, Valery Zorkin, the chairman of the Russian Constitutional Court. Although her main criticism was aimed at the Constitutional Court's attitude during the Crimean crisis, Lukyanova started the debate by noting the existence of the 'two worlds' among Russian international and constitutional lawyers:

> **[Russia] counts numerous highly professional independent experts in the field of law. However, they are usually barred from decision-making within the government [...] because, over twenty years, the state has selected the sort of legal doers it found convenient for itself. The rest, one way or another, were gradually removed beyond the bounds of the state's legal activities. As a result, two legal communities have evolved; they speak completely different languages and use different legal constructs. One community comprises officials 'in the field of law,' judges, parliament members, election commissioners, and law enforcement officers. The other community is made up of lawyers, human rights activists, and some of the independent scholars.**

In public international law, the independent thought that was forming in Russia in the course of the twenty-five years following the disintegration of the USSR has had to find its way through (or around) an extremely isolated and self-referential system of the post-Soviet international law tradition of teaching. In the attempt of self-preservation, this system strongly reacts to any critical or simply differing opinions and openly disregards a systemic study of international jurisprudence and international legal scholarship in most of the Russian textbooks and monographs. The notorious lack of English language knowledge often compounds a lack of interest in filling law libraries with legal literature of the XX century – a time when the Soviet Union was a closed territory.

Holders of dissenting opinions on any matter of importance in the post-Soviet academic international law school in Russia put themselves at risk of not being conferred their

Russian degree and of ostracism within the system. In the "backstage" of Russian academic life, scholars who express an opinion critical of any actions on the part of the Russian government from the standpoint of international law are now likely to face pointed questions about the sources of funds supposedly paid to them to make such statements (it is generally presumed that the money "comes from the West"), and their works and commentaries are likely to be disparaged as "articles for pay". Strikingly, a scholar's previous reputation and integrity apparently has no bearing on these presumptions.

Adding to the above, the Russian educational system is still disdainful of degrees obtained outside Russia, and this becomes a serious obstacle for the younger generation of Russian international law scholars whose chosen career is to teach in Russia and to improve the level of public international law at Russian universities. The diverse nature of the new generation of independent international lawyers in Russia makes it difficult to include them in any study, as they do not represent any formal "school", possibly yet. Yet the recent intensification of *ad hominem* attacks against the new generation by the old system suggests that the independently thinking international law scholars and practitioners in Russia are very much in the picture and that their voices may be starting to be heard.

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